IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1236 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAKWANA RAMESHBHAI DHUSHABHAI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

Mr. DP Joshi AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/04/2001

ORAL JUDGEMENT

The present petition is preferred by the petitioner-detenu Makwana Rameshbhai Dhusabhai who has been detained by an order of the District Magistrate,

Bhavnagar dated 4.9.2000 in exercise of powers under sub section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"). The petitioner challenges the impugned order of detention availing the protection under Article 21 and 22 of the Constitution of India and had, therefore, approached this court with this petition under Article 226 of the Constitution of India.

2. In this petition, rule was issued on 19.2.2001 by directing the office to place this matter for final hearing after service of the rule in seriatim as per chronological order of actual date of execution of detention order on the detenu. Thereafter, this court has adjourned the matter time and again to enable the respondents to file the affidavit in reply to the present petition. However, no affidavit in reply has been filed by the respondents herein and, therefore, the averments and the contentions raised in this petition have remained uncontroverted and unchallenged and this court has no option but to accept the same.

3. The facts of the case are that, an order of detention came to be passed by the District Magistrate on 4.9.2000 on the ground that about six offences are registered against the petitioner involving him in the offences punishable under section 379, 411, 447, and section 114 of the Indian Penal Code. The detaining authority recorded subjective satisfaction about the petitioner being a dangerous person as defined under section 2(c) of the PASA Act. The statements of the witnesses whose identity has not been disclosed in exercise of privilege under section 9(2) of the PASA Act, have also been considered by the detaining authority and he, therefore, ultimately came to the conclusion that there is no other remedy but to detain the petitioner under PASA to prevent him from pursuing his illegal and anti social activities.

3. The petitioner has challenged the impugned order of detention on various grounds raised in the petition. According to Ms. Mishra, learned advocate appearing for the petitioner, three statements were recorded by the concerned officer which were merely verified by the detaining authority and no subjective satisfaction has been recorded by the detaining authority in that regard that the fear expressed by the witnesses was genuine as required under the PASA Act. In view of this, according to Ms. Mishra, the claim of privilege under section 9(2) of the PASA Act was not justified and this has vitiated the subjective satisfaction and has rendered the impugned

order of detention vitiated. She has relied upon the decision of this court reported in 1996 (1) GLH page 300.

Learned AGP Mr. Joshi appearing for the respondent authorities has also submitted that looking to page 97, the statement was recorded on 21.8.2000 by the Additional District Magistrate, Bhavnagar and in left side of the column, the detaining authority namely the District Magistrate, Bhavnagar has merely endorsed the said statement by making remark of verification of the contents on 30.8.2000. All these three statements were recorded on 21.8.2000 claiming privilege under section 9(2) of the PASA Act and similar endorsement has been made on all these statements by the detaining authority on 30.8.2000 and, therefore, in view of these facts, learned AGP Mr. Joshi has fairly submitted that the point is squarely covered by the decision of this court reported in 1996 (1) GLH 300.

I have considered the submissions made by both the learned advocates and have also verified the records page no.97 to 107 in particular. I have also considered the decision of this court reported in 1996 (1) GLH 300. As per my view, the claim of privilege made in this case was not genuine and as a result thereto, has vitiated continued detention of the petitioner. On this ground alone, the petition is required to be allowed.

For the reasons recorded in the oral judgment, the petition succeeds and the same is allowed. The order of detention dated 4.9.2000 is vitiated and resulted to quash and set aside. The detenu Makwana Rameshbhai Dhusabhai who has been detained at the District Jail, Nadiad be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is Permitted.

Dt.24.4.2001. (H.K. Rathod,J.)

Vyas